IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14767 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHANRAJ DEVELOPERS PVT LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PERCY C KAVINA for Petitioner(s) : 1,
MR.JASHWANT K. SHAH, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 19/07/2007

ORAL JUDGMENT

Dhanraj Developers Pvt. Ltd.-petitioner is before this Court being aggrieved by order dated 20.05.2005 passed by respondent no.1-Secretary

(Appeals), whereby the Secretary (Appeals) has held that the reasons set out in the Show Cause Notice dated 10.11.2004 stand established and therefore, the order passed by the Taluka Development Officer, Rajkot bearing No.TP/ Jamin/ B.Kh.P. Vashi – 114/ 18 dated 11.01.1999 is quashed. The Secretary (Appeals) has also recorded that as error is with regard to the jurisdiction, District Development Officer, Rajkot is directed to place the matter before the Working Committee of the District Panchayat and to proceed with the matter in accordance with law.

2. Learned advocate Mr.Percy C. Kavina for the petitioner invited attention of the Court to the facts which led to the filing of the present petition. The petitioner had purchased the land in the year 2001 by registered sale deed. This land was granted Non-Agricultural (NA) Permission on an application being made by the predecessor in title of the petitioner on 03.11.1998 by order dated 11.01.1999 by the Taluka Development Officer.

The District Development Officer, Rajkot wrote to the Secretary (Appeals) on 07.08.2004, requesting him to take up the matter in suo motu revision under section 211 of the Bombay Land Revenue Code. In response to that a Show Cause Notice was issued on 10.11.2004 to which the petitioner filed reply dated 06.12.2004. The Secretary (Appeals) then passed order under challenge dated 20.05.2005.

3. Learned advocate for the petitioner invited attention of the Court to the Notification issued by the Collector's Office, Rajkot on 01.02.1986. Under the said Notification the villages surrounding Rajkot were divided into Classes 'A' to 'E'. It so happened that Village 'Munjka' was the village, a part of which was in Class 'A' and the rest of the village was in Class 'E'. So far as the villages which were falling within Class 'A' for the lands of those villages, NA Permission was required to be considered and granted by the District Panchayat and not by Taluka Panchayat. But so far as the villages which were falling in Class 'E' applications requesting for grant of NA Permission were to be

considered by Taluka Panchayat. In the present case, as mentioned hereinabove, it so happened that a part of Village 'Munjka' fell in Class 'A' and rest of the village fell in Class 'E'. The part of Village 'Munjka' which fell in Class 'A' is set out in the Notification, Survey Nos.1 to 32, 46 to 48 and 50 to 77 as a whole and Survey Nos.33, 34, 36, 37, 42, 44, 45 and traverse 49 (in part) fell in Class 'A'. The same Notification also sets out that a part of the following villages fall in Class 'E' category and then at serial no.30, Village 'Munjka' is mentioned. The aforesaid position is clarified in the map, which is obtained by the petitioner under the Right To Information Act, which is produced on record in Civil Application No.10449 of 2006 in Civil Application No.12752 of 2005 in Special Civil Application No.14767 of 2005. The aforesaid map clearly depicts that a part of Survey No.42 is within the limits of 5 KMs, as is the criteria for deciding its category/ class 'A'. Whereas major part of Survey No.42 is beyond that. Therefore, it falls in Class 'E' (category).

4. Learned advocate for petitioner invited attention of the Court to the reply which is produced at Annexure 'F' to the petition. Learned advocate for petitioner submitted that the contents of the said reply were not taken into consideration in true perspective. Therefore, the aforesaid error has crept in and the Special Secretary (Appeals) has also committed error in passing the order impugned.

5. Learned AGP Mr.Jashwant K. Shah submitted that so far as falling of village 'Munjka' in Class 'A' category is concerned, it is not in dispute, but at the same time he could not dislodge the fact that a part of Village 'Munjka' is also in Category 'E'. He is also not able to point out anything to dislodge the contents of the map, which is produced in Civil Application NO.10449 of 2006. Learned AGP submitted that it is the settled position of law that if an order is a nullity the same can be taken in revision at any time. The aforesaid submission is not applicable in the present case. The question is the factual error having crept in in the decision process of the Secretary (Appeals) and that being so the

order is found erroneous.

6. In the result the petition is allowed. Order dated 17/ 20th May 2005 (Annexure 'G' to the petition) is quashed and set aside. Meaning thereby the order of the Taluka Development Officer granting NA Permission dated 11.01.1999 stands revived, which was quashed by order impugned. Rule is made absolute. No order as to cost.

(RAVI R. TRIPATHI, J.)

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